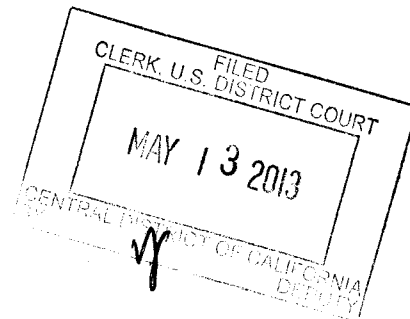


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SPORT DIMENSION, INC. and KURT
RIOS



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

TECH-4-KIDS, INC.

Plaintiff,

vs.

SPORT DIMENSION, INC. and
KURT RIOS,

Defendants.

SPORT DIMENSION, INC.,

Counter-Claimant,

vs.

TECH-4-KIDS, Inc.,

Counter-Defendant.

CASE NO. 2:12-cv-06769-PA-AJW

Honorable Percy Anderson

**DEFENDANT'S SEPARATE
STATEMENT AND OBJECTIONS
TO PLAINTIFF'S SEPARATE
STATEMENT**

Hearing Date: June 3, 2013
Time: 1:30 p.m.
Courtroom: 15

Initial Complaint Filed:
December 6, 2011

First Amended Complaint Filed:
August 17, 2012

Second Amended Complaint Filed:
March 4, 2013

Trial: August 6, 2013

Plaintiff's Statement of Allegedly Undisputed Fact	Defendant's Position and Supporting Evidence
<p>1. Tech-4-Kids' snow bikes, also referred to as the Snow Moto, were the first of their kind in that they are sleds featuring three small skis on the bottom and are designed and modeled after full-sized motorized snowmobiles.</p>	<p>Defendant disputes that Tech-4-Kids' snow bikes were the first sleds featuring three small skis.</p> <p>Plaintiff's evidence: Declaration of Brad Pedersen ("Pedersen Decl.") ¶ 2.</p> <p>Defendant's evidence: Declaration of Sarah S. Brooks in Support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment ("Brooks Decl.") Ex. 2 (deposition transcript of Evert Weenink ("Weenink Tr.")) at 75:16-25.</p>
<p>2. The Snow Moto has an adjustable seat, protective handle bars, a primarily decorative nose piece, suspension, braking system and licensed graphics.</p>	<p>Defendant does not dispute this fact.</p>
<p>3. The Snow Moto is licensed under three brands: Ski-Doo, Polaris, and X-Games, and was named the 2007 Hardline Licensed Item of</p>	<p>Defendant does not dispute this fact.</p>

1	the Year by the Licensing Industry	
2	Manufacturers Association.	
3	4. The Snow Moto was a highly	Defendant disputes that Tech-4-Kids
4	successful product for Tech-4-	existed in 2007.
5	Kids, which was a small company	
6	when the product first launched in	Plaintiff's evidence: Pedersen Decl. ¶
7	2007. At that time, Tech-4-Kids	4,5.
8	had only a few employees and	
9	generated a small amount of	Defendant's evidence: Brooks Decl.
10	revenue.	Ex. 1 (deposition transcript of Brad
11		Pedersen ("Pedersen Tr.)) at 14:2-14.
12	5. In 2009, Tech-4-Kids first sold the	Defendant does not dispute this fact.
13	Snow Moto to Costco U.S. as part	
14	of a test sale program that was	
15	extremely successful.	
16	6. The following year, in 2010,	Defendant does not dispute this fact.
17	Costco U.S. originally purchased	
18	30,000 Snow Moto units. Because	
19	it was on pace to sell out of its	
20	Snow Moto inventory, Costco	
21	U.S. subsequently ordered	
22	approximately 7,000 more Snow	
23	Moto units that same season.	
24	7. Early point-of-sales statistics in	Defendant does not dispute this fact.
25	2010 indicated that Costco U.S.	
26	would sell out of the Snow Moto	
27	even before reaching the peak	

1	sales period in December.	
2	8. In order to meet demand, Costco	Defendant does not dispute this fact.
3	U.S. ordered additional units at the	
4	last minute, purchasing a total of	
5	approximately 37,000 units of the	
6	Polaris model in 2010.	
7	9. Sport Dimension is owned by	Defendant does not dispute this fact.
8	Joseph Lin.	
9	10. Defendant Kurt Rios is president	Defendant does not dispute this fact.
10	of Sport Dimension.	
11	11. Stallion Sport Ltd. is a Hong Kong	Defendant disputes that Joseph Lin's
12	company owned by Joseph Lin's	brother is the sole owner of Stallion
13	brother.	Sport Ltd.
14		
15		Plaintiff's evidence: Lawrence Decl.
16		Ex. D (Lin Tr. 64:14-22).
17		
18		Brooks Decl. Ex. 28 (deposition
19		transcript of Joseph Lin ("Lin Tr.)) at
20		64:17-65:9.
21	12. Prior to being introduced to Tech-	Defendant disputes this statement to
22	4- Kids' Snow Moto, Sport	the extent Tech-4-Kids
23	Dimension never had a snow bike	mischaracterizes Sport Dimension's
24	product in its lineup.	product lineup as previously not
25		including snow products and snow
26		sleds.
27		
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1		Plaintiff's evidence: Lawrence Decl.
2		Ex. E (Rios Tr. 39:9-23)
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4		Defendant's evidence: Brooks Decl.
5		Ex. 4 (deposition transcript of Kurt
6		Rios ("Rios Tr.)) at 37:23-38:11.
7	13. On or about March 3, 2009, Kurt	Defendant does not dispute this fact.
8	Rios, on behalf of Sport	
9	Dimension, contacted Brad	
10	Pedersen, the President of Tech-4-	
11	Kids.	
12	14. Rios told Pedersen that he had	Defendant disputes that Rios only
13	seen some of Tech-4-Kids's snow	suggested the parties explore a
14	bike models at Canadian retailer	distributor relationship.
15	Canadian Tire Corporation	
16	("CTC") and was interested in	Plaintiff's evidence: Lawrence Decl.
17	exploring the possibility of	Ex. E (Rios Tr. 215:7-12); Lawrence
18	becoming Tech-4-Kids' U.S.	Decl. Ex. F. (Rios Ex. 51).
19	distributor of the Snow Moto.	
20		Defendant's evidence: Brooks Decl.
21		Ex. 12.
22	15. By 2009, Tech-4-Kids had already	Defendant does not dispute this fact.
23	experienced substantial success in	
24	selling its snow bike products in	
25	Canada, due in part to its existing	
26	relationship with Costco Canada	
27	and Canadian Tire Corporation.	

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1	Tech-4-Kids also successfully sold	
2	its snow bikes to Wal-Mart U.S.	
3	and Canada.	
4	16. When discussions began, Pedersen	Defendant disputes this statement on
5	explained to Rios that Tech-4-Kids	the grounds that Mr. Pederson only
6	would only enter into a	listed certain accounts that were off
7	distribution agreement that	limits, including "Dicks, Walmart,
8	exposed it to new U.S. retailers as	Kmart, and BJ's and Costco Canada"
9	opposed to retailers with whom	and did not mention that only "new
10	Tech-4-Kids had a preexisting	U.S. retailers"
11	relationship.	
12		Plaintiff's evidence: Lawrence Decl.
13		Ex. G. (SDI 001240).
14		
15		Defendant's evidence: Brooks Decl.
16		Ex. 9 at SDI 1224.
17	17. A two-week email dialogue	Defendant does not dispute this fact.
18	ensued, with the subject line "USA	
19	Distribution."	
20	18. In his initial March 3, 2009 email,	Defendant does not dispute this fact.
21	Rios stated to Pedersen that Sport	
22	Dimension "would hope that we	
23	could come to some agreement so	
24	that we could make sales calls this	
25	year before all commitments have	
26	been made."	
27	19. In a subsequent March 4, 2009	Defendant does not dispute this fact.

1	email in the same chain, Rios	
2	stated to Pedersen that Sport	
3	Dimension “would like to offer all	
4	three of [Tech-4-Kids’ snow bike]	
5	brands as it makes sense for your	
6	existing distribution and where it	
7	would make sense to us if we had	
8	to offer an exclusive.” Rios also	
9	stated that Sport Dimension	
10	“would like to get started as soon	
11	as [it] can.”	
12	20. In the same email, Rios stated that	Defendant does not dispute this fact.
13	“I look forward to us being able to	
14	speak tomorrow and hopefully put	
15	an agreement together.” Rios also	
16	stated “We reviewed the cost sheet	
17	that you sent us and worked from	
18	Retail to a Cost or back to see if	
19	we could put some sort of deal in	
20	place or arrangement.”	
21	21. In a subsequent March 10, 2009	Defendant does not dispute this fact.
22	email, Rios again stated “I hope	
23	that we can put a deal together.”	
24	22. In a March 9, 2009 email,	Defendant does not dispute this fact.
25	Pedersen rejected Rios’s previous	
26	proposal of \$30 per unit and	
27	counter-proposed \$31.50 for the	

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1	X-Games Snow Moto and \$33.25	
2	for the Ski-Doo and Polaris	
3	brands.	
4	23. On March 10, Rios accepted these	Defendant disputes this statement on
5	prices.	the grounds that Tech-4-Kids
6		mischaracterizes Rios's email.
7		
8		Plaintiff's evidence: Lawrence Decl.
9		Ex. G (SDI 001243).
10		
11		Defendant's evidence: Lawrence Decl.
12		Ex. G (SDI 001243).
13	24. However, in light of Rios's refusal	Defendant does not dispute this fact.
14	to pay an advance, Pedersen	
15	proposed increased pricing of	
16	\$33.50 for the X-Games brand and	
17	\$35.50 for the Ski-Doo and Polaris	
18	models.	
19	25. Rios accepted the new pricing on	Defendant disputes this statement on
20	March 17, 2009.	the grounds that Tech-4-Kids
21		mischaracterize Rios's testimony Rios
22		testified he accepted Mr. Pedersen's
23		higher prices for the snow bike samples
24		plus a \$3 service fee for shipping the
25		samples.
26		Defendant further disputes this fact on
27		the grounds that Tech-4-Kids

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	<p>mischaracterizes the Rios's March 10 email. The email states, "[w]e accept your new higher prices listed below along with \$3.00 service fee for shipping samples."</p> <p>Plaintiff's evidence: Lawrence Decl. Ex. G (SDI 001240).</p> <p>Defendant's evidence; Brooks Decl. Ex. 4 (Rios Decl.) at 254:4-21; Ex. 29..</p>
<p>26. In response to Pedersen's expressed intention to exclude from the distribution deal any U.S. retailers with whom Tech-4-Kids already had a relationship, in his March 9 email, Pedersen identified as "off limits" to Sport Dimension the following retailers: Costco, Dick's Sporting Goods, Wal-Mart, K-Mart, and B.J.'s Wholesale.</p>	<p>Defendant disputes this statement on the grounds that Pedersen identified Costco Canada, not Costco generally.</p> <p>Plaintiff's evidence: Lawrence Decl. Ex. G (SDI 001243).</p> <p>Defendant's evidence: Brooks Decl. Ex 9 at SDI 1222.</p>
<p>27. On March 10, Rios confirmed this list of off limit accounts with the single variation of specifying only Costco Canada as opposed to Pedersen's generic reference to</p>	<p>Defendant disputes this statement on the grounds that Pedersen specified Costco Canada as opposed to Costco generally.</p>

1 2 3 4 5	"Costco."	Plaintiff's evidence: Lawrence Decl. Ex. G (SDI 001241). Defendant's evidence: Brooks Decl. Ex 9 at SDI 1223-24.
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	28. Later that same day, Pedersen corrected Rios's attempt to include only Costco Canada.	Defendant disputes this statement on the grounds that as late as March 26, 2009, Mr. Pedersen wrote, "with regards to Costco I will revert back." Defendant further disputes this fact on the grounds that Mr. Pedersen referred only to "Costco" without further specification. Plaintiff's evidence: Lawrence Decl. Ex. G (SDI 001241). Defendant's evidence: Brooks Decl. Ex. 12.
21 22 23 24 25 26 27	29. Pedersen stated that "your list of accounts is correct except as it stands now we will also handle Costco" (meaning Costco U.S.).	Defendant disputes this statement because Tech-4-Kids mischaracterizes Mr. Pedersen's response. He did not say that he meant Costco U.S., instead referring only to "Costco" without further specification.

1		Plaintiff's evidence: Lawrence Decl.
2		Ex. G (SDI 001241).
3		
4		Defendant's evidence: Same as
5		Plaintiff's.
6	30. In his March 9 email, Pedersen	Defendant objects to the use of the
7	asked for a minimum purchase	term "committed" as Mr. Rios did not
8	commitment of 3200 Snow Moto	say he was committing.
9	units. On March 10, Rios rejected	
10	the minimum purchase request but	Plaintiff evidence: Lawrence Decl. Ex.
11	committed to "try and sell as much	G. (SDI 001243).
12	as we can."	
13		Defendant's evidence: Same as
14		Plaintiff's.
15	31. Multi-year distribution	Defendant disputes this fact on the
16	relationships are standard in the	basis that no witness explicitly testified
17	industry.	that multi-year distribution
18		relationships are standard in the
19		industry.
20		
21		Plaintiff's evidence: Lawrence Decl.
22		Ex. C (Smick Tr. at 19:1-21:23);
23		Pedersen Decl. ¶8.
24		
25		Defendant's evidence: Same as
26		Plaintiff's.
27	32. Manufacturers and wholesalers	Defendant disputes this statement on

1 2 3 4 5 6 7 8 9 10	generally schedule their product pitches to retailers in December through March (sometimes going into May) for the next snow season. Winter products are typically shipped to retailers around August and the merchandise is generally shelved in September for the upcoming winter season.	the grounds that Mr. Weenink testified that most retailers make their decisions between December through January. Pedersen Decl. Ex. 9. Brooks Decl. Ex. 2 (Weenink Tr.) at 143: 9-14.
11 12 13 14 15 16 17 18 19 20 21 22 23 24	33. Pedersen also offered to make marketing information available to assist Sport Dimension in its distribution efforts. Rios responded to the marketing information offer on March 10, stating: "Thanks and appreciated, any support to help us become experts in your category of products would be appreciated. In closing, we see this as a great opportunity to help get more exposure for your product in the market."	Defendant disputes this statement to the extent it misrepresents and mischaracterizes Mr. Pedersen's offer and his reason(s) for making said offer. Mr. Pedersen offered to "make available our marketing manager to assist with sales data." Plaintiff's evidence: Lawrence Decl. Ex. G. (SDI 001244). Defendant's evidence: Same as Plaintiff's.
25 26 27	34. Following a request by Rios for samples of the various Snow Moto models, on March 17, 2009 Rios	Defendant disputes this statement on the grounds that Tech-4-Kids misquotes and wholly misrepresents

1	wrote: "Brad, We are good to go.	Rios's March 17, 2009 email. Mr.
2	We accept your new higher prices	Rios wrote, "Brad, We are good to go.
3	listed below along with \$3.00	We accept your new higher prices
4	service fee for shipping."	listed below along with \$3.00 service
5		fee for shipping <i>samples</i> ." (emphasis
6		added).
7		
8		Plaintiff's evidence: Lawrence Decl.
9		Ex. G. (SDI 001240).
10		
11		Defendant's evidence: Same as
12		Plaintiff's.
13	35. In the same March 17, 2009 email,	Defendant does not dispute this fact.
14	Rios stated "I will update [sic] you	
15	as we progress."	
16	36. Pedersen responded to that March	Defendant does not dispute this fact.
17	17, 2009 email from Rios stating	
18	that he was "[g]lad to move	
19	forward."	
20	37. The pricing that the parties	Defendant disputes this statement to
21	ultimately agreed upon is, to date,	the extent it claims Plaintiff and Sport
22	the lowest special wholesale	Dimension came to an agreement.
23	pricing that Tech-4-Kids has	
24	offered to any distributor or	Plaintiff's evidence: Pedersen Decl. ¶
25	retailer for the Snow Moto	10.
26	product.	
27		Defendant's evidence: Brooks Decl.
28		

1		Ex. 9.
2	38. On March 27, 2009, Sport	Defendant does not dispute this fact.
3	Dimension prepared a Sam's U.S.	
4	quote sheet with the pricing for the	
5	Ski-Doo brand Snow Moto.	
6	39. Todd Richards, Vice President of	Defendant disputes that Richards
7	Sales for Sport Dimension,	testified that he attempted to sell the
8	testified that he attempted to sell	products, as Richards actually stated
9	Tech-4- Kids' products to several	that he "would have been touching base
10	retailers, including B.J.'s	with the buyer, inquiring if they might
11	Wholesale, Big 5 Sporting Goods,	have interest in this particular product."
12	Sports Chalet, and Bass Pro.	
13		Plaintiff's evidence: Lawrence Decl.
14		Ex. I (Richards Tr. 108:21-109:17);
15		Lawrence Decl. Ex. J (Sport
16		Dimension's response to Tech-4-Kids'
17		Interrogatory No. 17.)
18		
19		Defendant's evidence: Brooks Decl. Ex
20		5 (deposition transcript of Todd
21		Richards ("Richards Tr.)) 110:12-17.
22	40. On April 2, 2009, Rios sent an	Defendant does not dispute this fact.
23	email with a price quote for the	
24	Ski Doo Snow Moto to Sam's	
25	Club.	
26	41. In that email, Rios wrote: "Please	Defendant does not dispute this fact.
27	see the quote sheet for the Ski-Doo	

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1 snow bike . . . As a vendor we are
 2 always being tasked with bringing
 3 Sam's new exciting items, this is
 4 one of those." Rios also proposed
 5 that Sam's Club sell the product in
 6 its "top 100 snow clubs between
 7 Thanksgiving and Christmas."

8 42. When Rios told Pedersen in July
 9 2009 that the Sam's Club sale had
 10 not gone through, he stated he
 11 hoped to "have better luck next
 12 year."

Defendant disputes this statement on
 the grounds that Rios said: "Sorry this
 did not work out better for both of us,
 this is a good item, and maybe with a
 better retail climate we will have better
 luck next year."

Plaintiff's evidence: Lawrence Decl.
 Ex. H (T4KP000668); Lawrence Decl.
 Ex. E (Rios Tr. 269:20-25, 270:1-19).

Defendant's evidence: Same as
 Plaintiff's.

21 43. In late March 2009, Tech-4-Kids'
 22 Director of Sales, Evert Weenink,
 23 learned that Todd Richards had
 24 approached B.J.'s Wholesale, one
 25 of the retailers on the "off limits"
 26 list and offered for sale one of
 27 Tech-4-Kids' Snow Motos.

Defendant objects to Tech-4-Kids' use
 of the term "approached" because it is
 vague and ambiguous as used in this
 statement.

Furthermore, Defendant disputes that
 Richards offered to sell a Snow Motos

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	<p>to B.J.'s Wholesale because Richards actual testimony was that he "would have been touching base with the buyer, inquiring if they might have interest in this particular product."</p> <p>Lawrence Decl. Ex. O (Richards Ex. 14) (T4KP000004-5).</p> <p>Brooks Decl. Ex. 5 (Richards Tr.) 110:12-17.</p>
<p>44. In an email string dated March 26, 2009, Pedersen informed Rios that Richards had approached an "off limits" retailer and Rios apologized for the confusion stating that "it was clearly an error, we apologize and will clarify with the buyer that this is your business."</p>	<p>Defendant objects to Tech-4-Kids' use of the term "approached" because it is vague and ambiguous as used in this statement.</p>
<p>45. Richards subsequently came to understand that Rios had agreed not to approach certain retailers including B.J.'s</p>	<p>Defendant disputes this statement to the extent it mischaracterizes Mr. Richards's testimony.</p> <p>Furthermore, Defendant objects to Tech-4-Kids' use of the term "approach" as vague and ambiguous.</p>

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2		Plaintiff's evidence: Lawrence Decl.
3		Ex. I (Richards Tr. 104:12-21)
4		
5		Defendant's evidence: Same as
6		Plaintiff's.
7	46. At Rios's instruction, Richards	Defendant does not dispute this fact.
8	went back to B.J.'s and indicated	
9	that he could not offer the product	
10	and, instead, the product could be	
11	procured from Tech-4-Kids.	
12	47. Sport Dimension had hoped to	Defendant disputes this statement to
13	earn a 30 to 35 percent profit	the extent it mischaracterizes
14	margin on its sales.	Richards's testimony and Rios's March
15		4, 2009 email.
16		
17		Plaintiff's evidence: Lawrence Decl.
18		Ex. G (SDI 001246); Lawrence Decl.
19		Ex. I (Richards tr. 142:13-17).
20		
21		Defendant's evidence: Same as
22		Plaintiff's.
23	48.	[Left blank by Plaintiff]
24	49. Lin admitted that Sport Dimension	Defendant disputes this statement to
25	could not have offered Tech-4-	the extent it misrepresents and
26	Kids' products to Sport	mischaracterizes Lin's testimony. In
27	Dimension's customers absent	addition to explaining the steps taken
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1 2 3 4 5 6 7 8 9 10 11 12	permission from Tech-4-Kids to do so.	before parties can work with each other, Lin testified that “[p]ermission” is very broad. I don’t know what kind of permission,” and repeatedly asked for a definition the term. Plaintiff’s evidence: Lawrence Decl. Ex. D (Lin Tr. 240:13-18). Defendant’s evidence: Brooks Decl. Ex. 28 (Lin Tr.) at 240:13-241:20; 243:23-244:14.
13 14 15 16 17 18 19 20 21 22 23 24 25	50. Pedersen offered to make marketing information available to assist Sport Dimension in its distribution efforts.	Defendant disputes this statement to the extent it misrepresents and mischaracterizes Mr. Pedersen’s offer and his reason(s) for making said offer. Mr. Pedersen offered to “make available our marketing manager to assist with sales data.” Plaintiff’s evidence: Lawrence Decl. Ex. G (SDI 001244). Defendant’s evidence: Same as Plaintiff’s.
26 27 28	51. Pedersen provided Rios and Sport Dimension with additional	Defendant objects to Tech-4-Kids’ characterization of this fact because the

1 2 3 4 5 6 7 8 9 10 11 12 13	materials meant to help Sport Dimension and market and sell the Snow Motos.	evidence does not make clear that the materials provided were “meant to help” Sport Dimension market and sell Snow Motos. Plaintiff’s evidence: Lawrence Decl. Ex P (Pedersen Ex. 5) (SDI 007034-35); Lawrence Decl. Ex. Q (Pedersen Ex. 3) (SDI 001203-4); Lawrence Decl. Ex. R (SDI 001186-92). Defendant’s evidence: Same as Plaintiff’s
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	52. Rios and Richards would have had no reason to offer Tech-4-Kids’ product unless there were an agreement that obligated them to do so or provided them with guaranteed access to the product that they were selling.	Defendant objects to Tech-4-Kids’ use of the term “offer” as vague and ambiguous. Both Richards and Rios testified that they were testing market interest – not offering Tech-4-Kids’ product for sale. Additionally, Defendant disputes this statement because both Rios and Richards provide the reason for contacting businesses regarding Tech-4-Kids’ product – to gauge market interest. Furthermore, Lin testified that “generally, at the beginning, we would have to see if there is a market for this

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	product...”
	Plaintiff’s evidence: Lawrence Decl. Ex. D (Lin Tr. 240:4-25).
	Defendant’s evidence: Brooks Decl Ex, 4. (Rios Tr). 224:9-25; Ex. 5 (Richards Tr.) 110:8-17; 111:20-112:3; Ex. 28 (Lin Tr.) 240:19-20.
53. After it entered into the distribution agreement with Sport Dimension, Tech-4-Kids substantially reduced its efforts to sell the Snow Moto to U.S. retailers because it believed that Sport Dimension was pursuing those opportunities.	<p>Defendant disputes this statement because Sport Dimension and Tech-4-Kids did not enter into a distribution agreement.</p> <p>Defendant further disputes this statement because the facts show Tech-4-Kids actually increased their U.S. customer base, adding at least Costco U.S.</p> <p>Plaintiff’s evidence: Pedersen Decl. ¶ 11.</p> <p>Defendant’s evidence: Brooks Decl. Ex. 1 (Pedersen Decl.) at 55:11-57:158; 78:21-79:14; Ex. 2 (Weenink Tr.) at 129:12-137:19; Ex. 3 (deposition transcript of Gary Smick (“Smick</p>

1		Tr.”)) at 75:16- 76:10; 112:3-16; Ex. 4
2		(Rios Tr.) 224:9-25; Ex. 28 (Richards
3		Tr.) 110:8-17; 111:20-112:3; Ex. 29.
4	54. During 2009 and 2010, Tech-4-	Defendant does not dispute this fact.
5	Kids only quoted pricing for the	
6	Snow Moto to two additional U.S.	
7	retailers.	
8	55. Gary Smick, one of Tech-4-Kids’	Defendant disputes this statement to
9	outside sales representatives,	the extent it mischaracterizes Mr.
10	primarily for Costco U.S. received	Smick’s testimony.
11	an email blast from Tech-4-Kids	
12	to several of its sales	Plaintiff’s evidence: Lawrence Decl.
13	representatives indicating that it	Ex. C (Smick Tr. 163:5-164:16).
14	would be selling the Snow Moto	
15	through a single U.S. distributor.	Defendant’s evidence: Same as
16		Plaintiff’s.
17	56. Smick recalls being upset because	Defendant disputes this fact because
18	he interpreted the email to mean	Mr. Smick testified that “we had been
19	that he would be replaced for the	working so hard for the Costco
20	Costco U.S. sales efforts which he	business” without specifying a
21	had been working on for several	timeframe.
22	months. When Smick called Evert	
23	Weenink, Weenink reassured him	Plaintiff’s evidence: Lawrence Decl.
24	that Costco U.S. was excluded	Ex. C (Smick Tr. 163:5-164:16).
25	from the distribution deal.	
26		Defendant’s evidence: Same as
27		Plaintiff’s.

1 2 3 4 5 6 7 8	57. On April 15, 2009, Pedersen emailed Rios with licensing information from X-Games and stated: "Could be interesting for sharing with your Sams buyer. I know you are looking at Ski Doo but we could do a different version for Sams of Xgames."	Defendant does not dispute this fact.
9 10 11 12 13 14 15 16 17 18 19 20 21	58. On May 5, 2009, Pedersen wrote to Rios: "We are gearing up for production and I wanted to check in with you on the status of the program for year. Let me know how you are making out and when you intend to start placing orders for ship dates." Rios responded by indicating that Sport Dimension had some success in selling the Ski-Doo model to Sam's.	Defendant disputes this statement because Tech-4-Kids misrepresents and mischaracterizes Rios's response. Rios responded that he was waiting on Sam's response with respect to Sam's interest in including the Ski-Doo model in a 100 club test. Plaintiff's: Lawrence Decl. Ex. M (T4KP000614). Defendant's evidence: Same as Plaintiff's.
22 23 24 25 26 27	59. On May 6, 2009, Pedersen asked Rios: "How are you making out at the other [accounts]?" Rios responded that "Price has been an issue" but asked Richards to provide a more complete update.	Defendant does not dispute this fact.

28

1	Richards responded on May 8 by	
2	telling Pedersen that he had done	
3	“presentations” with “several”	
4	accounts who “all noted the same	
5	thing. There is not enough margin	
6	in the item and \$99 is definitely	
7	the ceiling retail place. Most	
8	buyers commented that they liked	
9	the item.”	
10	60. On July 10, 2009, Pedersen asked	Defendant does not dispute this fact.
11	Rios about the status of the Sam’s	
12	Club Test. Rios responded: “Sorry	
13	for the lack of communication, the	
14	response time from Sam’s club has	
15	been very slow as well. They only	
16	confirmed last week that they will	
17	not be going forward with a test of	
18	the snow bike.”	
19	61. Richards testified that under	Defendant does not dispute this fact.
20	normal circumstances, when he is	
21	trying to sell an item to a retailer,	
22	he visits the potential customer in	
23	person and presents them with a	
24	picture or sample of the product.	
25	62. Richards admitted that he failed to	Defendant objects on the grounds that
26	make the same efforts when he	Richards did not state that his efforts
27	attempted to sell the Snow Moto.	were “half-hearted,” nor did he testify

28

1	Richards testified that he made a	that he “failed” to do anything.
2	single call to a limited number of	
3	retailers with whom he had	Plaintiff’s evidence:
4	relationships, never conducted any	Lawrence Decl. Ex. I (Richards Tr.
5	follow-up, and even failed to	111:2-25, 113:18-24, 114:218).
6	present the buyers that he	
7	contacted with a picture of the	Defendant’s evidence: Same as
8	product that he was selling, and	Plaintiff’s.
9	made an effort that he, himself,	
10	admitted to be half-hearted.	
11	63. Richards testified that he never	Defendant disputes this statement to
12	even saw the sample Snow Motos	the extent Tech-4-Kids mischaracterizes
13	sent by Tech-4-Kids.	Richards’s testimony.
14		
15		Richards did not testify that he never
16		even saw the sample Snow Motos sent
17		by Tech-4-Kids. Rather, Richards
18		testified that, in March 2009, he was
19		unaware of Sport Dimension obtaining
20		possession of samples of Tech-4-Kids’
21		snow bikes and that he did not recall
22		ever seeing a Tech-4-Kids snow bike at
23		Sport Dimension’s offices.
24		
25		Plaintiff’s evidence: Lawrence Decl.
26		Ex. I (Richards Tr. 137:25, 138:8).
27		
28		Defendant’s evidence: Brooks Decl. Ex

1		5 (Richards Tr.) 137:25-138:8.
2	64. When Sport Dimension was	Defendant disputes this fact on the
3	selling its own competing product	grounds that there is no evidence that
4	to retailers, it provided the retailers	Sport Dimension always provides
5	with detailed presentation	retailers with detailed presentation
6	materials.	materials. The fact that Sport
7		Dimension sometimes provided such
8		materials does not mean it always does
9		so.
10		
11		Plaintiff's evidence:
12		Lawrence Decl. Ex. Y (SDI 006996-
13		7003).
14		
15		Defendant's evidence: Brooks Decl.
16		Ex. 5 (Richards Tr.) at 119:9-16.
17	65. Rios offered the Snow Moto to	Defendant disputes this fact on the
18	only a single customer, Sam's	grounds that representatives for Sport
19	Club, and priced the product at	Dimension testified that they called
20	\$47.00.	multiple retailers regarding T4K's
21		snow bikes.
22		
23		Plaintiff's evidence:
24		Lawrence Decl. Ex. L (Rios Ex. 50)
25		(SDI0015731-33).
26		
27		Defendant's evidence: Brooks Decl.
28		

1		Ex. 5 (Richards Tr.) at 111:2-114:8.
2	66. Richards admitted that Sport	Defendant disputes this fact on the
3	Dimension still could have made a	grounds that Richards never testified
4	profit if it had offered a price	that Sport Dimension could have made
5	lower than \$47.00.	a profit if it offered a price lower than
6		\$47. Instead, in response to a
7		hypothetical question using figures
8		provided by T4K's counsel, Richards
9		testified that it was "possible" that
10		Sport Dimension could have made a
11		profit if it offered the \$47 price.
12		
13		Plaintiff's evidence:
14		Lawrence Decl. Ex. I (Richards Tr.
15		188:10-19).
16		
17		Defendant's evidence: Same as
18		Plaintiff's.
19	67. When Pedersen asked Rios for an	Defendant does not dispute this fact.
20	update on sales, Rios stated that	
21	the retailers to whom Sport	
22	Dimension offered the product	
23	liked the product but felt "price	
24	was an issue."	
25	68. In the end, Sport Dimension failed	Defendant disputes this fact on the
26	to sell a single Snow Moto to any	grounds that it mischaracterizes the
27	of Sport Dimension's customers.	evidence as Sport Dimension was not

1		obligated to sell Snow Motos.
2		
3		Plaintiff's evidence:
4		Pedersen Decl. ¶ 13.
5		
6		Defendant's evidence: Brooks Decl
7		Ex. 1 (Pedersen Tr.) at 151:24-152:2.
8	69. When Sport Dimension attempted	Defendant disputes this fact on the
9	to sell its own Yamaha product to	grounds that it mischaracterizes the
10	Sam's Club, it offered the snow	evidence.
11	bike for the substantially lower	
12	price of \$36.00.	Plaintiff's evidence:
13		Lawrence Decl. Ex. V (SDI 013449).
14		
15		Defendant's evidence: Same as
16		Plaintiff's.
17	70. At no time from March 2009 to	Defendant disputes this fact on the
18	December 2009 did Rios or	grounds that Sport Dimension was not
19	anyone at Sport Dimension	contemplating developing a competing
20	disclose to Tech-4-Kids that Sport	product during the time the parties
21	Dimension was contemplating	were having discussions.
22	developing a competing product.	
23		Plaintiff's evidence: Pedersen Decl. ¶
24		14.
25		
26		Defendant's evidence: Docket Entry
27		("DE" 61, Rios Decl., ¶ 12.
28		

71. Had Tech-4-Kids known of Sport Dimension's duplicity, it never would have allowed Sport Dimension to pass itself off as Tech-4-Kids' distributor, much less provide it with confidential and commercially sensitive information.

Defendant objects to this statement on the grounds that it mischaracterizes the evidence. Defendant objects to the term "duplicity." Defendant also objects on the grounds that Sport Dimension was not T4K's distributor. Further, Defendant objects on the grounds that T4K did not provide confidential information.

Plaintiff's evidence: Pedersen Decl. ¶ 15.

Defendant's evidence: Brooks Decl. Ex 1 (Pedersen Tr.) at 333:12-16, Ex. 2 (Weenink Tr.) at 20: 10-18; Ex. 3 (Smick Tr.) at 32:14-18. DE 61, Rios Decl., ¶ 11.

72. In January 2010, less than nine months after the parties entered into the distribution agreement and only five months after Rios told Pedersen that not a single retailer in the United States was interested in Tech-4-Kids' snow bikes, Sport Dimension had completed 90% of its development of a competing snow bike.

Defendant disputes this statement on the grounds that the parties never entered into a distribution agreement. Defendant also objects on the grounds that Defendant never claims to have spoken to every retailer in the U.S.

Plaintiff's evidence: Lawrence Decl. Ex. S (Rios Ex. 37) (SDI 001132).

1		
2		Defendant's evidence: Same as
3		Plaintiff's. DE 61, Rios Decl., ¶ 11.
4	73. In early 2010, Sport Dimension	Defendant disputes this statement on
5	shipped samples to Costco	the grounds that T4K makes
6	Canada, but because it was unable	unsupported assumptions regarding
7	to brand the product in time, it did	Sport Dimension ability to sell an un-
8	not successfully sell the Yamaha	branded snow bike product in 2010.
9	snow bike to Costco U.S. until the	
10	2011 season.	Plaintiff's evidence:
11		Lawrence Decl. Ex. S (Rios Ex. 37)
12		(SDI001132 -35); Lawrence Decl. Ex.
13		AA (SDI 001008).
14		
15		Defendant's evidence: Same as
16		Plaintiff's.
17	74. Once it had a branded product for	Defendant objects to this statement on
18	Costco, Costco stopped buying	the grounds that it mischaracterizes the
19	from Tech-4-Kids.	evidence as it improperly assumes that
20		Costco stopped buying T4K's snow
21		bikes because Defendant provided a
22		snow bike.
23		
24		Plaintiff's evidence: Pedersen Decl. ¶
25		17.
26		
27		Defendant's evidence: DE 116-2,
28		

1		Nelson Decl. ¶¶ 3-9.
2	75. In his March 9, 2009 email,	Defendant disputes this statement on
3	Pedersen offered terms to Rios	the grounds that the intent of Pedersen
4	under specific headings which	is not an undisputed fact.
5	Pedersen intended to constitute the	
6	proposed terms of an agreement.	Plaintiff's evidence:
7		Lawrence Decl. Ex. A (Pedersen Tr.
8		150:15-23); Lawrence Decl. Ex. G
9		(SDI001243).
10		
11		Defendant's evidence: Same as
12		Plaintiffs.
13	76. When Sport Dimension sold the	Defendant disputes the characterization
14	Yamaha to Costco U.S. in early	of this fact on the grounds that
15	2011, it did so at a price that	Richards testified that, while generally
16	would have earned Sport	the minimum margin requirement for
17	Dimension significantly less than a	products is 30%, Sport Dimension's
18	35 percent profit margin.	minimum margin requirement for
19		Costco is 20%.
20		
21		Plaintiff's evidence:
22		Lawrence Decl. Ex. I (Richards
23		Tr.212:12-18).
24		
25		Defendant's evidence: Brooks Decl.
26		Ex. 5 (Richards Tr.) at 142:9-17
27	77. Rios claimed that he and Lin made	Defendant disputes this fact on the
28		

1	the decision to develop a	grounds that the parties never entered
2	competing snow bike in November	into a distribution agreement.
3	2009, only seven months after	
4	entering into the distribution	Plaintiff's evidence:
5	agreement with Tech-4-Kids.	Lawrence Decl. Ex. E (Rios Tr. 39:11-
6		13)
7		Defendant's evidence: DE 61, Rios
8		Decl., ¶ 11.
9	78. Rios tried to sell Sport	Defendant does not dispute this fact.
10	Dimension's competing snow bike	
11	product to Costco Canada.	
12	79. Sport Dimension began pursuing	Defendant does not dispute this fact.
13	Yamaha for a license in February	
14	2010.	
15	80. Tech-4-Kids lost U.S. sales	Defendant disputes that T4K relied on
16	opportunities in 2009 and 2010	Sport Dimension to make sales on its
17	because it relied on Sport	behalf, as T4K attempted to sell its
18	Dimension to make those sales.	snow bikes in the U.S. only months
19		after the parties last communications in
20		July of 2009. On the same grounds,
21		Defendant disputes that T4K lost sales
22		opportunities in the U.S. due to T4K's
23		reliance on Sport Dimension.
24		
25		Plaintiff's evidence: Pedersen Decl. ¶
26		16.
27		
28		

1		Defendant's evidence: Brooks Decl.
2		Ex. 17; see also Plaintiff's ¶54 above.
3	81. Tech-4-Kids lost the Costco U.S.	Defendant's dispute this statement on
4	business because Costco was	the grounds that the evidence shows
5	selling Sport Dimension's Yamaha	that the buyer for Costco U.S. chose
6	snow bike instead.	not to purchase T4K's snow bike for a
7		variety of reasons.
8		
9		Plaintiff's evidence: Pedersen Decl. ¶
10		17.
11		
12		Defendant's evidence: DE 116-2,
13		Nelson Decl. ¶ 6.
14	82. As a result of Sport Dimension's	Defendant disputes that Plaintiff
15	conduct, Tech-4-Kids sustained	sustained any damages on the grounds
16	damage, including in the form of	that Plaintiff's snow bike sales have
17	lost sales to U.S. retailers in 2009	increased.
18	and 2010 and lost sales to Costco	
19	U.S. in 2011.	Plaintiff's evidence: Pedersen Decl. at
20		¶18.
21		
22		Defendant's evidence: Brooks Decl.
23		Ex. 2, Weenink Tr. P. 164:18-168:11.
24	Defendant's Additional Material Facts	
25	Undisputed Material Fact	Supporting Evidence
26	83. Tech-4-Kids, Inc. ("T4K" or	Docket Entry ("DE") 1.
27	"Plaintiff") filed the initial	
28		

1 complaint in this action on
 2 December 6, 2011, in the District
 3 of Maryland, asserting claims of
 4 patent infringement and
 5 misappropriation of confidential
 6 business information against
 7 Sport Dimension and its
 8 customer Costco Wholesale
 9 Corp. (“Costco”).

10 84. On August 17, 2012, T4K
 11 transferred this case to the
 12 Central District of California and
 13 filed the First Amended
 14 Complaint (“FAC”) which
 15 dropped the claim for patent
 16 infringement and claims against
 17 Costco, and asserted for the first
 18 time common law claims of
 19 fraud and interference with
 20 prospective economic advantage,
 21 as well as misappropriation of
 22 trade secrets.

23 85. On March 4, 2013, more than a
 24 year after filing its initial
 25 complaint, T4K’s Second
 26 Amended Complaint (“SAC”)
 27 was entered in this action.

DE 29.

DE 84.

1	86. Through the SAC, T4K added	DE 84 at ¶¶ 51-72.
2	four entirely new claims and the	Declaration of Sarah Brooks In Support
3	President of Sport Dimension,	Of Defendant's Opposition to
4	Kurt Rios, in his individual	Plaintiff's Motion For Summary
5	capacity.	Judgment ("Brooks Decl.") ¶ 7, Ex. 6.
6	87. The SAC added an allegation	DE 84 at ¶¶ 73-81.
7	that a contract existed between	
8	Sport Dimension and T4K, and	
9	that Sport Dimension breached	
10	that contract.	
11	88. The SAC also added claims for	DE 84 at ¶¶ 60-72; 82-88; and 89-96;
12	breach of the implied covenant	
13	of good faith and fair dealing	
14	and promissory estoppel and	
15	added a second claim for fraud.	
16	89. Sport Dimension has been in	DE 61 ("Rios Decl.") ¶ 2.
17	business for 16 years, and is	
18	located in Carson, California.	
19	90. Sport Dimension's products	Rios Decl. ¶ 3.
20	include Body Glove™ wetsuits,	
21	Body Glove™ body boards,	
22	Body Glove personal floatation	
23	devices, Snow Slider, Yamaha™	
24	Snow bike, and Sea-doo™ sea	
25	scooters.	
26	91. Sport Dimension began selling	Rios Decl. ¶ 4.
27	snow-related products including	

28

1	snow sliders in 2002.	
2	92.Sport Dimension has	Rios Decl. ¶ 5.
3	relationships with numerous	
4	retailers through which its	
5	products are sold, including	
6	Costco USA, Sam's Club, The	
7	Sport Authority, and Dick	
8	Sporting's Goods.	
9	93.Sport Dimensions relationships	Rios Decl. ¶ 5.
10	with the retailers listed above	
11	existed prior to Sport	
12	Dimension's initial contact with	
13	Plaintiff.	
14	94.T4K is a Canadian company that	Brooks Decl. Ex. 1 (Pedersen Tr.) at
15	has been in business for 5 years.	14:2-14.
16	95.In early 2009, T4K sold snow	Brooks Decl. Ex. 2 (Weenink Tr.) at
17	bikes in various retail stores in	77:11-18; 101: 23-25; 120: 21-23.
18	Canada and the United States.	
19	96.The President of T4K is Brad	DE 84 at ¶ 23
20	Pedersen.	
21	97.T4K was established in 2009	Brooks Decl. Ex. 1 (Pedersen Tr.) at
22	after Sport Dimension started	14:2-14.
23	selling snow products.	
24	98.T4K is a Canadian company that	DE 84 at ¶19.
25	designs, manufacturers, and sells	
26	toys and other products for	
27	children.	

28

1	99. The product at issue is a snow	Brooks Decl. Ex. 2 (Weenink Tr.) at
2	bike product for children, which	67:9-68:10.
3	is similar to snow sleds but have	
4	three skis.	
5	100. The Yamaha snow bike	Rios Decl. ¶ 13.
6	was intentionally designed to	
7	look different than T4K's snow	
8	bikes.	
9	101. The Yamaha snow bike is	Rios Decl. ¶ 13.
10	covered by U.S. Patent No.	
11	D662010	
12	102. The parties explored the	Brooks Decl. Ex. 1 (Pedersen Tr.) at
13	possibility of entering into a	271:20-274:24; Ex. 4 (Rios Tr.) at
14	distributing agreement during	241:18-21.
15	March to July 2009. Most of	
16	these conversations took place	
17	by email and some by phone.	
18	The parties however do not	
19	recall what contract terms were	
20	proposed on the phone.	
21	103. Since T4K's discussion	Brooks Decl. Ex. 5.
22	with Sport Dimension, T4K's	
23	snow bike business in the U.S.	
24	has increased. Sales went from	
25	\$2,130,626 in 2009 to	
26	\$3,535,068 in 2011, and	
27	\$4,275,187 in 2012.	

28

1	104. T4K and Sport Dimension	Brooks Decl. Ex. 1 (Pedersen Tr.) at
2	are competitors.	37:14-24.
3	105. In 2007 or 2008, T4K	Brooks Decl. Ex. 2 (Weenink Tr.) at 75:
4	began selling a product for	9-14; 76:21-77:18.
5	children called a snow bike.	
6	106. T4K sells three different	DE 84 at ¶20.
7	versions of its snow bike – the	
8	X-Games, Ski-doo and Polaris.	
9	107. Both the X-Games and	Brooks Decl. Ex 2 (Weenink Tr.) at
10	Ski-doo snow bikes were on sale	76:21 -77:18.
11	in 2007 or 2008 prior to	
12	discussions with Sport	
13	Dimension.	
14	108. Around March 3, 2009,	DE 84 at ¶ 23.
15	Rios contacted Plaintiff's	Brooks Decl. Ex. 8.
16	President, Brad Pedersen	Rios Decl. ¶ 8.
17	("Pederson") and the parties	
18	began exploring a potential	
19	distributor relationship whereby	
20	Sport Dimension would consider	
21	serving as Plaintiff's U.S.	
22	Distributor for Plaintiff's snow	
23	bike product.	
24	109. Mr. Rios proposed several	Brooks Decl. Ex. 8.
25	different ideas of ways the	
26	companies could work together,	
27	including distributing T4K's	

28

1	product in the U.S., or obtaining	
2	a sub-license or buying directly	
3	from T4K at a pre-determined	
4	price.	
5	110. On March 4, 2009, Mr.	Brooks Decl. Ex. 8.
6	Pedersen replied to Mr. Rios'	
7	email and stated that while T4K	
8	had a "strong position in	
9	Canada," the U.S. had been	
10	"challenging."	
11	111. On March 9, 2009, Mr.	Brooks Decl. Ex. 9. at 1224.
12	Pedersen replied suggesting	
13	several terms, including a	
14	minimum commitment whereby	
15	Sport Dimension would commit	
16	to a \$100,000 advance that	
17	would be deducted from any	
18	orders that Sport Dimension	
19	would make or in other words a	
20	minimum purchase commitment	
21	of about 3200 pieces of the sled.	
22	112. Mr. Pedersen also stated	Brooks Decl. Ex. 9. at 1224.
23	that certain accounts are "off	
24	limits" but stated that he needed	
25	to check with his sales director	
26	regarding Costco.	
27	113. Mr. Pedersen stated that	Brooks Decl. Ex. 10 at 1210.

28

1 T4K was interested Sam's Club.
 2 Mr. Pedersen also says "if we
 3 can agree to these points, I will
 4 have 1 [sic] conversation with
 5 my chair to confirm the above
 6 and if he is in agreement, then I
 7 would draft up a simple MOU to
 8 sign.

9 114. Mr. Rios did not accept
 10 this proposal and on March 10,
 11 2009 stated that with respect to
 12 the \$100,000 minimum
 13 commitment "this may be a
 14 sticking point as we cannot agree
 15 to this." Mr. Rios also stated
 16 "we will try to sell as much as
 17 we can."

Brooks Decl. Ex. 9. at 1224.

18 115. On March 16, 2009 Mr.
 19 Rios replies to Mr. Pedersen's
 20 proposal by asking whether
 21 Sport Dimension can also obtain
 22 samples of the Polaris and Ski-
 23 doo snow bike and what are the
 24 differences between these
 25 models.

Brooks Decl. Ex. 10.

26 116. On March 17, 2009 Mr.
 27 Rios emailed Mr. Pedersen and

Brooks Decl. Ex. 10.

1	stated that “we are good to go.”	
2	and states that an assistant will	
3	contact Mr. Pedersen regarding a	
4	credit card for the snow bike	
5	samples.	
6	117. Mr. Rios believed that he	Brooks Decl. Ex. 4 (Rios Tr.) at 254:4-
7	was accepting Mr. Pedersen’s	21.
8	price on the snow bike samples.	
9	118. On March 18, 2009 Mr.	Brooks Decl. Ex. 10.
10	Pedersen sent an email to Mr.	
11	Rios informing him that T4K	
12	does not have enough samples of	
13	the Ski-doo snow bike and are	
14	going to Canadian Tire to	
15	purchase samples.	
16	119. On March 26, 2009 Mr.	Brooks Decl. Ex. 11.
17	Rios sent an email to Mr.	
18	Pedersen asking for clarification	
19	on whether T4K is calling on	
20	Costco USA.	
21	120. On March 26, 2009 Mr.	Brooks Decl. Ex. 12.
22	Pedersen responded to this email	
23	stating that “in regards to Costco	
24	I will revert back.”	
25	121. Mr. Rios replied and	Brooks Decl. Ex. 13.
26	asked Mr. Pedersen to let him	
27	know as soon as he could about	

28

1	Costco USA. [59]	
2	122. On March 26, 2009 Mr.	Brooks Decl. Ex. 1 (Pedersen Tr.) at
3	Pedersen sends an email to Mr.	150:4-14; Ex. 11.
4	Rios asking for Sport	
5	Dimension's corporate	
6	information so he can complete a	
7	memorandum of understanding	
8	("MOU").	
9	123. Mr. Pedersen never	Brooks Decl. Ex. 1 (Pedersen Tr.) at
10	completed an MOU or sent Mr.	151:24-152:2.
11	Rios a MOU.	
12	124. In April, 2009 Mr. Rios	Brooks Decl. Ex. 14.
13	sent an email to Roger Stakley,	
14	the buyer at Sam's Club in the	
15	U.S. regarding T4K's Ski-doo	
16	snow bike.	
17	125. On April 16, 2009 Mr.	Brooks Decl. Ex. 15.
18	Rios emailed Mr. Pedersen	
19	stating that they are getting close	
20	to a 100 club test with the T4K	
21	Ski-doo snow bike in Sam's	
22	Club.	
23	126. Mr. Rios also asked Todd	Brooks Decl. Ex. 5 at (Richards Tr.) at
24	Richards, Sport Dimension's VP	108:1-109:17; Ex. 15.
25	of sales contact various potential	
26	customers in the U.S. regarding	
27	T4K's snow bikes including Big	

28

1	5, Academy Sport, and others.	
2	127. Mr. Rios responded that	Brooks Decl. Ex. 16.
3	the price of the snow bike was an	
4	issue with potential customers.	
5	128. On July 10, 2009 Mr.	Brooks Decl. Ex. 15.
6	Pedersen sent an email to Mr.	
7	Rios stating that because of the	
8	lack of communication he	
9	assumes that nothing is	
10	happening.	
11	129. Having not heard from	Brooks Decl. Ex. 1 (Pedersen Tr.) at
12	Sport Dimension, Mr. Pedersen	289:21-290:6.
13	assumed that Sport Dimension	
14	was not interested in pursuing	
15	the business.	
16	130. The parties never	Brooks Decl. Ex. 1 (Pedersen Tr.) at
17	discussed or came to an	123:19-124:3.
18	agreement regarding the time	
19	frame of any potential	
20	agreement.	
21	131. Nor did the parties discuss	Brooks Decl. Ex. 1 (Pedersen Tr.) at
22	or some to an agreement	136:9-12.
23	regarding termination of the	
24	potential agreement or	
25	sublicensing.	
26	132. In addition, a minimum	Brooks Decl. Ex. 1 (Pedersen Tr.) at
27	purchase quantity of 3,200	140:9-141:11.

1	pieces was a key term of the	
2	potential agreement that was not	
3	agreed to by Mr. Rios.	
4	133. In the Fall 2009, T4K sold	Brooks Decl. Ex. 1 (Pedersen Tr.) at
5	under 1000 units of its Ski-doo	55:11-57:15; Ex. 2 (Weenink Tr.) at
6	snow bike to Costco U.S. as a	137:2-22; Ex. 3 (Smick Tr.) at 75:16-
7	“test.”	76:10; 112:3-13.
8	134. Subsequently, Costco U.S.	Brooks Decl. Ex. 1 (Pedersen Tr.) at
9	purchased T4K’s Polaris snow	78:21-79:14; Ex. 2 (Weenink Tr.) at
10	bike for the 2010/2011 snow	137:23-138:6; Ex. 3 (Smick Tr.) at
11	season.	112:9-16.
12	135. In February, 2010, T4K	Brooks Decl. Ex. 17.
13	began marketing its snow	
14	products, including its snow	
15	bikes to U.S. customers,	
16	including Big 5, Sports Chalet	
17	and others.	
18	136. Around April 21, 2010,	Brooks Decl. Ex. 18.
19	T4K submitted a quote to Blain’s	
20	Supply, Inc. for its X-Games	
21	snow bike.	
22	137. Blain is also a Sport	Brooks Decl. Ex 19.
23	Dimension customer and	
24	purchased a snow bike from	
25	Sport Dimension in 2012.	
26	138. On March 9, 2011, T4K	Brooks Decl. Ex. 20.
27	submitted a quote to Academy	

28

1	Sport for its X-Games snow	
2	bike.	
3	139. Academy is an account	Brooks Decl. Ex. 21.
4	that Sport Dimension had	
5	previously called on in regarding	
6	T4K's snow bike.	
7	140. T4K has also sold its snow	Brooks Decl. Ex. 2 (Weenink Tr.) at
8	bike to Costco Canada for six	144:4-7.
9	years in a row.	
10	141. After T4K and Sport	Rios Decl, ¶ 12.
11	Dimension had ceased their	
12	discussions, Sport Dimension	
13	began discussions with Yamaha	
14	Corporation ("Yamaha") to	
15	design and develop its own snow	
16	bikes.	
17	142. In 2011, Sport Dimension	Rios Decl, ¶ 12.
18	offered its snow bikes ("the	
19	Yamaha Snow Bike") which	
20	were designed in cooperation	
21	with Yamaha.	
22	143. The parties did not	Rios Decl. ¶ 11.
23	execute a memorandum of	
24	understanding because they	
25	never agreed on key terms.	
26		
27		
28		

1 2 3 4 5	144. T4K's promissory estoppel claim is based on the same email exchange that is the basis for Plaintiff's contract claim.	DE 84 at ¶¶82-88.
6 7 8 9	145. T4K claims that the parties entered into an agreement by way of emails and oral discussions.	DE 84 at ¶¶ 51-59.
10 11 12 13	146. T4K "took a run" at selling foam sleds to Costco when it knew that Sport Dimension was already supplying Costco with foam sleds.	Brooks Decl. Ex. 3 (Smick Tr.) at 135:12-136:9; Ex. 22.
14 15 16	147. Weenink testified that he saw similar snow bikes for sale in Europe.	Brooks Decl. Ex. 2 (Weenink Tr.) at 75:15-25.
17 18 19 20 21 22	148. The parties never expressly discussed whether Sport Dimension was permitted to sell its own competing snow bike, or snow bikes sold by parties other than T4K.	Brooks Decl. Ex. 1 (Pedersen Tr.) at 279:1-281:25.
23 24 25 26 27	149. Mr. Rios wrote, "[s]orry this did not work out better for both of us, this is a good item, and maybe with a better retail climate we will have better luck next year."	Brooks Decl. Ex. 23.

150. Following the parties July 2009 email exchange, the parties did not communicate until this lawsuit was filed in December of 2012.	Brooks Decl. Ex. 1 (Pedersen Tr.) at 288:2-17.)
151. Sport Dimension has never sold its Yamaha snow bike in Costco Canada.	Brooks Decl. Ex. 4 (Rios. Tr.) at 173:23-174:4.
152. In early 2010, Sport Dimension began designing its own bike that it could sell at a better price point,	Brooks Decl. Ex. 1 (Richards Tr.) at 145:21-148:7.
153. For months, Sport Dimension tried to find a contact at Yamaha to discuss a potential licensing agreement.	Brooks Decl. Exs. 24, 25.
154. Around February of 2011, Sport Dimension signed a "deal memo" with Yamaha to design and develop its own snow bike.	Brooks Decl. Ex. 26.
155. T4K asked for of limit accounts so that Sport Dimension would not try to sell T4K snow bikes to retailers who were already selling T4K snow bikes, as "[t]he value add for [T4K] is getting better penetration into the US market beyond what we have been able to achieve."	Brooks Decl. Ex. 27.

156. T4K seeks damages for breach of contract based on performance through 2015.	Brooks Decl. Ex. 7.
157. Representatives for Sport Dimension attempted to gauge market interest to determine whether a relationship with T4K was feasible.	Brooks Decl. Ex, 4. (Rios Tr.) at 224:9-25; Ex. 5 (Richards Tr.) at 110:8-17; 111:20-112:3; Ex. 28 (Lin Tr.) at 240:19-20.
158. Rios testified that neither he nor Mr. Pedersen proposed terms regarding sublicensing and that there was no discussion regarding sublicensing.	Brooks Decl. Ex. 30 (Rios. Tr.) at 197:19-198:6.

DATED: May 13, 2013

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